

**MONTANA DEPARTMENT OF HEALTH & HUMAN SERVICES**

**FOOD & CONSUMER SAFETY SECTION**

**COGSWELL BUILDING**

**HELENA, MONTANA 59620**

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**Code for: Pools, Spas, and Other Water Features**

**Montana Code Annotated 2013**

**Chapter 53. Public Swimming Pools and Swimming Areas**

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## Part 1. General Provisions

**50-53-101. Purpose of regulation.** It is the public policy of this state to regulate public swimming pools and public bathing places to protect public health and safety.

**History:** En. Sec. 201, Ch. 197, L. 1967; R.C.M. 1947, 69-5501; amd. Sec. 1, Ch. 646, L. 1985.

**50-53-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in [2-15-2201](#).

(2) "Lazy river" means a constructed watercourse through which people travel by use of flotation devices.

(3) "Local board of health" or "board" means a local board as defined in [50-1-101](#).

(4) "Local health officer" or "officer" means a local health officer as defined in [50-1-101](#).

(5) "Person" means a person, firm, partnership, corporation, or organization or the state or any political subdivision of the state.

(6) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(7) (a) "Public swimming pool" means an artificial pool and related appurtenances for swimming, bathing, wading, or other aquatic therapy or recreation, including but not limited to natural hot water pools, spas, splash decks, water slides, lazy rivers, and wave pools.

(b) The term does not include:

(i) swimming pools located on private property, including the private common area property of owner-occupied condominium developments, used for swimming or bathing only by the owner, members of the owner's family, or their invited guests; or

(ii) medicinal hot water baths for individual use.

(8) "Spa" means an artificial pool that is designed for recreational bathing or therapeutic use and that is not drained, cleaned, or refilled for individual use. A spa includes but is not limited to a therapeutic pool, hydrotherapy pool, whirlpool, hot tub, or Jacuzzi-type whirlpool bath.

(9) "Splash deck" means a constructed area over which water is sprayed but is not allowed to pool.

(10) "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.

(11) "Wading pool" means a pool in which the water depth does not exceed 2 feet.

(12) "Wave pool" means a swimming pool designed for the purpose of producing wave action in the water.

**History:** Ap. p. Sec. 202, Ch. 197, L. 1967; amd. Sec. 24, Ch. 187, L. 1977; Sec. 69-5502, R.C.M. 1947; (1), (2)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; R.C.M. 1947, 69-4102(1), (2), 69-5502; amd. Sec. 2, Ch. 646, L. 1985; amd. Sec. 1, Ch. 708, L. 1991; amd. Sec. 139, Ch. 418, L. 1995; amd. Sec. 318, Ch. 546, L. 1995; amd. Sec. 1, Ch. 93, L. 2003; amd. Sec. 9, Ch. 150, L. 2007; amd. Sec. 1, Ch. 310, L. 2007.

**50-53-103. Department rules.** (1) The department shall adopt rules relating to the operation of public swimming pools and public bathing places, including rules:

(a) setting standards to ensure sanitation and safety in public swimming pools and public bathing places to protect public health and safety;

(b) imposing reasonable fees for review of plans relating to the design, construction, reconstruction, alteration, conversion, repair, and installation of equipment and for plan review when plan review is conducted by the department;

(c) relating to the licensing of operators of public swimming pools and public bathing places;

(d) providing procedures for the enforcement of the laws and rules relating to public swimming pools and public bathing places;

(e) relating to cooperative agreements between the department and local boards of health; and

(f) setting performance standards for local boards of health, local health officers, and sanitarians to meet as a condition to receipt of funds provided by the department pursuant to [50-53-218](#).

(2) Any rule relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings or installation of equipment in buildings is effective only when it has been adopted by the department of labor and industry as part of the state building code and filed with the secretary of state pursuant to [50-60-204](#).

**History:** En. Secs. 203, 204, Ch. 197, L. 1967; amd. Secs. 104, 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5503, 69-5504; amd. Sec. 3, Ch. 646, L. 1985; amd. Sec. 2, Ch. 708, L. 1991; amd. Sec. 166, Ch. 483, L. 2001; amd. Sec. 2, Ch. 310, L. 2007.

**50-53-104. Powers of health officers -- enforcement authority.** Authorized employees of the department and local boards of health may:

(1) at reasonable times inspect public swimming pools and public bathing places and otherwise conduct investigations to determine if provisions of this chapter and rules of the department have been or are being violated and make reports to the department concerning the inspections;

(2) request an injunction from the district court to enjoin actions in violation of this chapter or rules adopted by the department;

(3) bring actions to abate nuisances maintained in violation of this chapter in the manner provided by law for the summary abatement of other public nuisances;

(4) file complaints with the district court for assessment of the penalties provided for in [50-53-216](#) or for recovery of costs provided for in [50-53-217](#), or both.

**History:** En. Sec. 205, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5505; amd. Sec. 3, Ch. 708, L. 1991.

**50-53-105. Publication of inspection reports.** The department may publish reports of inspections authorized by [50-53-104](#)(1).

**History:** En. Sec. 206, Ch. 197, L. 1967; R.C.M. 1947, 69-5506.

**50-53-106. Duties of pool operators.** Each person operating a public swimming pool or public bathing place shall:

- (1) operate the pool or public bathing place in a sanitary and safe manner;
- (2) keep records of public health and safety information required by the department;
- (3) furnish information to the department on forms prescribed by it.

**History:** En. Sec. 208, Ch. 197, L. 1967; R.C.M. 1947, 69-5508.

**50-53-107. Pool operation to be sanitary, healthful, and safe -- when lifeguard not required.** (1) Public swimming pools and public bathing places, including pool structures, methods of operation, source of water supply, methods of water purification, lifesaving apparatus, safety measures for bathers, and personal cleanliness measures for bathers, must be sanitary, healthful, and safe.

(2) A lifeguard is not required for a privately owned public swimming pool if:

- (a) a sign is prominently displayed on the swimming pool premises with the words "No lifeguard is on duty" or words of substantially the same meaning; and
- (b) one individual per shift is on the premises, accessible to the pool, and currently certified as competent in cardiopulmonary resuscitation by either the American red cross or the American heart association.

(3) Tourist homes providing spa facilities to their guests shall prominently display a sign on the spa premises with the words "No lifeguard is on duty" or words of substantially the same meaning. Tourist homes providing spa facilities to their guests are exempt from the requirements of subsection (2)(b).

**History:** En. Sec. 209, Ch. 197, L. 1967; R.C.M. 1947, 69-5509; amd. Sec. 1, Ch. 302, L. 1983; amd. Sec. 1, Ch. 31, L. 1985; amd. Sec. 2, Ch. 93, L. 2003.

**50-53-108. Unauthorized construction or operation a public nuisance.** The construction or operation of a public swimming pool or public bathing place contrary

to the provisions of this chapter or rules adopted by the department under the provisions of this chapter is a public nuisance and dangerous to public health and safety.

**History:** En. Sec. 210, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5510; amd. Sec. 4, Ch. 646, L. 1985.

**50-53-109. Violation of chapter a misdemeanor.** A person who violates this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 or more than \$500, imprisonment for not more than 6 months, or both. Each day that a violation continues is a separate violation.

**History:** En. Sec. 211, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5511.

**50-53-115. Special requirements for flow-through hot springs pools.** In addition to the other requirements of this chapter and rules promulgated under this chapter, flow-through hot springs pools must meet the following requirements:

- (1) The temperature of the pool water must be 106 degrees F or less.
- (2) The water must have sufficient clarity at all times so that a black disc, 6 inches in diameter, is readily visible when placed on a white field at the deepest point of the pool.
- (3) The pool water must be maintained at a pH of no less than 7.2 and not greater than 9.4.
- (4) The pool must provide sufficient water volume exchange to produce an 8-hour turnover of the entire volume of pool water to waste. In addition:
  - (a) the pool, and all surfaces that flow into the pool, must be drained, cleaned, and sanitized every 72 hours; or
  - (b) the pool must be disinfected, and a chlorine residual of 1 to 3 parts per million or a bromine residual of 3 to 6 parts per million must be maintained in the pool at all times.
- (5) Signs must be prominently posted that specify pool rules and special health hazards associated with swimming or bathing in flow-through hot springs pools. The contents of the signs must be determined by department rule. The department, in developing rules under this section, shall consult with flow-through hot springs pool owners.

**History:** En. Sec. 1, Ch. 155, L. 1995; amd. Sec. 1, Ch. 422, L. 2007.

## Part 2. Licensure of Public Swimming Pools and Bathing Places

**50-53-201. License required -- validation.** (1) A person may not operate a public swimming pool or public bathing place without annually obtaining a license from the department.

(2) A license is required for each separate public swimming pool or public bathing place. A public swimming pool is separate if:

(a) its water does not commingle with water from any other public swimming pool; or

(b) it is serviced by a separate water filtration system.

(3) A license issued by the department is not valid unless signed in accordance with [50-53-206](#), if applicable, or in accordance with [50-53-207](#), in the case of an appeal.

**History:** En. Sec. 4, Ch. 708, L. 1991; amd. Sec. 218, Ch. 42, L. 1997; amd. Sec. 3, Ch. 93, L. 2003; amd. Sec. 3, Ch. 310, L. 2007.

**50-53-202. Application for and right to license.** (1) An application for both an original and renewal license to operate a public swimming pool or public bathing place must be made to the department, must contain the information required by the department, and must be accompanied by the fee provided for in [50-53-203](#).

(2) A license must be issued to an applicant who has satisfied the requirements for a license provided in part 1, this part, and department rules.

(3) Upon issuing a license, the department shall forward the license to the appropriate local health officer for validation as provided in [50-53-206](#), if applicable.

**History:** En. Sec. 5, Ch. 708, L. 1991; amd. Sec. 219, Ch. 42, L. 1997; amd. Sec. 4, Ch. 310, L. 2007.

**50-53-203. License fee and late fee -- disposition.** (1) (a) Except as provided in subsection (1)(b), each application for an original or renewal license must be accompanied by a license fee of \$200.

(b) Each application for an original or renewal license for a spa or wading pool with a total water capacity not exceeding 4,000 gallons must be accompanied by a license fee of \$75.

(2) An operator of a public swimming pool or public bathing place who fails to renew a license by the expiration date provided in [50-53-204](#) and who operates the public swimming pool or public bathing place in the license year for which a renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of \$25 for each calendar month after the renewal due date in addition to the renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for any operation without a license.

(3) If the local board of health conducts its own inspections and enforcement activities for the public swimming pools and public bathing places within its jurisdiction:

(a) the department shall deposit 85% of the fees collected under subsection (1) in the state special revenue fund to the credit of the local board inspection fund account created by [50-2-108](#). Money deposited in the local board inspection fund account is subject to appropriation by the legislature for the purposes of [50-53-218](#).

(b) the department shall deposit 15% of the fees collected under subsection (1) and all the fees collected under subsection (2) in an account in the state special revenue fund to be appropriated by the legislature to the department for the enforcement of part 1 and this part.

(4) If the local board of health has delegated its inspection and enforcement activities for public swimming pools and public bathing places to the department, the department shall deposit all of the fees collected under subsections (1) and (2) in an account in the state special revenue fund to be appropriated by the legislature to the department for the enforcement of part 1 and this part.

**History:** En. Sec. 6, Ch. 708, L. 1991; amd. Sec. 1, Ch. 277, L. 1993; amd. Sec. 220, Ch. 42, L. 1997; amd. Sec. 5, Ch. 310, L. 2007.

**50-53-204. License expiration -- nontransferability.** (1) A license issued under part 1 and this part expires on December 31 of the year of issuance unless it is suspended or canceled by the department before that date.

(2) A license issued under part 1 and this part is not transferable.

**History:** En. Sec. 9, Ch. 708, L. 1991; amd. Sec. 221, Ch. 42, L. 1997.

**50-53-206. Validation of license required.** (1) (a) If the local board of health conducts its own inspections and enforcement activities for the public swimming pools and public bathing places within its jurisdiction, a license issued by the department under part 1 and this part is not valid until it is signed by the local health officer of the jurisdiction in which the public swimming pool or public bathing place is located.

(b) The local health officer shall, within 15 days of receipt of the license, validate or refuse to validate the license. Failure of the officer to validate a license is a refusal for the purposes of [50-53-207](#).

(2) Validation is not required if the local board of health has delegated its inspection and enforcement activities for public swimming pools and public bathing places to the department.

**History:** En. Sec. 7, Ch. 708, L. 1991; amd. Sec. 222, Ch. 42, L. 1997; amd. Sec. 6, Ch. 310, L. 2007.



**50-53-207. Refusal of health officer to validate -- appeal to board.** (1) A local health officer may refuse to validate a license issued by the department under part 1 and this part only if the officer determines that the license applicant has not met the requirements for the issuance of a license under part 1, this part, and department rules. If the local health officer refuses to validate a license, the officer shall notify the license applicant and the department of the refusal within 5 days of the officer's decision. The notice must state the grounds for the refusal.

(2) The license applicant may appeal the decision of the local health officer to the local board of health by filing a written notice of appeal with the officer and the board within 30 days of the officer's refusal or within 30 days of the expiration of the period for the officer's decision under [50-53-206](#), whichever is first.

(3) Upon filing the notice of appeal, the license applicant is entitled to a hearing before the board to determine the applicant's eligibility for a license under part 1, this part, and department rules. The hearing must be held pursuant to the contested case procedure of the Montana Administrative Procedure Act. If the board finds that the applicant is entitled to a validated license, the presiding officer of the board shall validate the license by signing the license.

**History:** En. Sec. 8, Ch. 708, L. 1991; amd. Sec. 223, Ch. 42, L. 1997.

**50-53-209. Cooperative agreements -- inspections.** (1) The department may enter into cooperative agreements with local boards of health to authorize those boards to act as agents of the department and to conduct inspections of and enforce applicable statutes and department rules relating to public swimming pools and public bathing places within the jurisdictions of the respective boards.

(2) The department or a local board of health, pursuant to a cooperative agreement, shall annually conduct:

(a) at least one full facility inspection and one critical point inspection of each public swimming pool or public bathing place operated throughout the year; and

(b) at least one full facility inspection of each seasonal public swimming pool or public bathing place.

(3) The department shall enter into cooperative agreements with the department of fish, wildlife, and parks and other state agencies that operate public swimming pools or public bathing places to address the enforcement of this chapter and rules adopted under this chapter.

**History:** En. Sec. 10, Ch. 708, L. 1991; amd. Sec. 4, Ch. 93, L. 2003.

**50-53-211. Denial, suspension, or cancellation of license -- multiple pool facility.** (1) The department may deny, suspend, or cancel a license if it finds that the license applicant or licensee has violated part 1, this part, or department rules and has failed or refused to remedy or correct the violation in accordance with the procedure

provided in [50-53-213](#).

(2) If the license of an operator who operates more than one public swimming pool under one license is denied, suspended, or canceled, the use of all of the public swimming pools on the premises must cease unless the department determines that the violation for which the license was denied, suspended, or canceled does not affect the operation or the use of all of the public swimming pools on the premises.

**History:** En. Sec. 11, Ch. 708, L. 1991; amd. Sec. 224, Ch. 42, L. 1997.

**50-53-212. Administrative enforcement -- notice -- department hearing.** (1) A license may not be denied, suspended, or canceled or corrective action may not be ordered by the department unless the department delivers to the license applicant or licensee a written notice of violation that contains a written statement of the facts constituting the violation and a citation to the statute or rule of the department alleged to have been violated. Further administrative enforcement action may not be taken by the department pursuant to the notice if within 10 days after receipt of the notice, the license applicant or licensee complies with the provisions of [50-53-213](#).

(2) The department may combine with any notice issued under subsection (1) an order for the suspension or cancellation of a license or for corrective action as the department finds necessary to remedy the violation evidenced in the notice. The order becomes final 10 days after service unless within that time the license applicant or licensee requests a hearing pursuant to subsection (4) or submits a corrective action plan in accordance with [50-53-213](#).

(3) The department may combine with any notice or order issued under subsection (1) or (2) an order for the license applicant or licensee to appear before the department within a time specified by the department and show cause why the department should not deny, suspend, or cancel the license or otherwise order compliance with part 1, this part, and the rules of the department.

(4) A hearing request by a license applicant or licensee must be made in writing to the department and must specify the mistake in the facts or law relied on by the department. A hearing held pursuant to this section must be held in accordance with the contested case procedure of the Montana Administrative Procedure Act. Following a hearing, the department may issue an appropriate order. Service of notice or an order mailed by the department is complete upon mailing.

**History:** En. Sec. 12, Ch. 708, L. 1991; amd. Sec. 225, Ch. 42, L. 1997.

**50-53-213. Compliance with corrective action plan as bar to further administrative enforcement.** The department may not deny, suspend, or cancel the license or require corrective action of an operator of a public swimming pool or public bathing place who received a notice of violation from the department pursuant to [50-53-212](#) if:

(1) the operator submits a plan to correct the violation to the department within 10 days of service of the notice;

(2) the department approves the plan in writing, including the time in which the plan must be complied with; and

(3) the operator complies with the plan within the time period prescribed by the department.

**History:** En. Sec. 13, Ch. 708, L. 1991.

**50-53-214. Return of license for alteration or destruction.** Upon cancellation of a license or the right to operate one or more public swimming pools under a single license for the premises, the operator of the public swimming pool shall return the license to the department for destruction of the license or deletion of the listing of the public swimming pool affected by the cancellation. Cancellation by the department of a license to operate a public swimming pool is effective notwithstanding the refusal or failure of an operator to return the license to the department.

**History:** En. Sec. 14, Ch. 708, L. 1991.

**50-53-216. Civil penalties -- other enforcement not barred.** (1) A person who violates a provision of part 1, this part, department rules implementing those sections, an order of the department, or any condition of a license issued by the department is subject to a civil penalty not to exceed \$500 for each violation.

(2) An action for collection of a civil penalty under this section does not bar administrative enforcement under [50-53-212](#), an action for injunctive relief under [50-53-104](#), or enforcement under [50-53-109](#).

**History:** En. Sec. 15, Ch. 708, L. 1991; amd. Sec. 226, Ch. 42, L. 1997.

**50-53-217. Recovery of costs by department or local jurisdiction.** In a civil or criminal action brought by the department or a local jurisdiction to enforce the requirements of part 1 and this part, the rules of the department, or any condition of a license or to assess civil penalties and in an action brought by the department to enforce an order of the department, the court may, in the case of an intentional violation of part 1 and this part, assess the operator of the public swimming pool or public bathing place for the costs of any investigation and the costs of the civil or criminal action, including reasonable attorney fees.

**History:** En. Sec. 16, Ch. 708, L. 1991; amd. Sec. 227, Ch. 42, L. 1997.

**50-53-218. Department to pay board for inspections or enforcement, or both.** (1) By June 30 of each year, the department shall pay to a local board of health established under [50-2-104](#), [50-2-106](#), or [50-2-107](#) an amount from the local board inspection fund account, created by [50-2-108](#), for the purpose of inspecting public swimming pools and public bathing places licensed under part 1 and this part or for taking appropriate enforcement action with respect to the public swimming pools and public bathing places, or for both inspection and enforcement. The payment required by this section must be made to a board only if the board and any local health officer and sanitarian for the jurisdiction of the board meet the program performance standards established by department rules.

(2) Money received by the board pursuant to subsection (1) may be used only for the purpose of inspections and enforcement under part 1 and this part and must be used to supplement and not supplant other money received by the board for the same purpose.

(3) The department may use money in the local board inspection fund account appropriated to the department for the enforcement of part 1, this part, and the rules of the department and for inspections to determine compliance with those sections and rules in any local jurisdiction not receiving payment under subsection (1).

**History:** En. Sec. 17, Ch. 708, L. 1991; amd. Sec. 228, Ch. 42, L. 1997.